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No. 91-1092

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1991

BEEKMAN PAPER CO.,
Petitioner,

v.

CRANE & CO., INC.; RICHARD W. KERANS; THOMAS A. WHITE; HAMILTON DAVIS,
Respondents.

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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February 6, 1992

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REPLY BRIEF OF PETITIONER

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Preliminary Statement

Respondents/defendants in their opposition brief seek to defeat the petition upon the ground (among others) that petitioner has avoided the facts and that they are against petitioner beyond dispute.[1]

I

UNDER RULE 16.1 OF THIS COURT THE RECORD CAN BE SUMMONED AND THE PETITION SUMMARILY DISPOSED OF UPON THE MERITS

However unusual, this Court can and has summoned the record for review upon the merits. *See*, 16 Wright, Miller, Cooper, Federal Practice and Procedure § 4004, n. 64 (Supp West 1991) (exhaustive discussion and citation to this

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[1] Respondent is correct in pointing out, then adding in its own appendix, petitioner's failure to include the District Court opinions. Though such omission was unintentional, petitioner apologizes, thanking respondents for doing what should have been done in petitioner's appendix.

Moreover: for reasons advanced in this reply brief as well as subsumed in the petition, petitioner welcomes as full a record scrutiny of the facts as possible.

Court's holdings). So confident is petitioner that such review will result in reversal, it seeks, in addition to full review by way of grant of the petition, this alternative.

The full record (including if possible both the transcripts of all the oral arguments before the Circuit Court plus the recordings for listening) will show that the perjury of respondents suborned by its law firm was full before all the federal courts in the chain; and, that as a consequence, there is neither jurisdiction in the federal system save to so state, nor the need then for further activity via Rule 16.2.[2]

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[2] Inter alia this Court will find that the district court's findings [sic] of fact, often - even beyond their totally implausibility - represented that court's creating facts never advanced by respondents at any time. Not only did these "facts" appear only for the first time in the written opinion of the district court; but, literally, the court interjected itself as though a party rather than as the neutral trier of the facts. Worse, in the sense of the word, the district court *ex parte* intruded, because, despite lengthy briefings and oral argument, (preserved in the record by petitioner who ordered a transcript), the district court never even asked for party presentation about much of

That respondents seek - desperately - to both avoid the record and create the impression that petitioner is factually off the wall,[3] is further seen in its "PARTIES TO THE PROCEEDING" which lists only Technical Graphics, Inc. (Resp Br ii).

In fact, at all times relevant to the action, respondent admitted under both rule 9 of the Federal Rules of Civil Procedure and rule 26 of the Federal Rules of Appellate Procedure, an interested party to Crane & Co., Inc. was Byron Weston Company, a wholly owned subsidiary of Crane (R. 127-28; *see also* R. 206).[4]

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its implausible fact findings, waiting till written opinions to advance them for the very first time.

[3] That the district court and the circuit court ignored the record to achieve the hideous result extant, proves contrary to respondent's innuendo claim that petitioner is disgruntled, that the emperors wear no clothes.

[4] A minor fact since at best it raised a colorable argument of non diversity since Byron Weston and Crane shared New York offices. The point here is that - by commission (as respondents accused petitioner of intentional omission of the district court opinions) - respondents worry about the record, nudging it

Equally, to achieve a deleterious affect, in a pseudo-fact sense, respondents claim (Resp Br 2) that petitioner claimed the wrong basis for federal jurisdiction. Of course without diversity there would be no federal action, but - and this is the point - without legitimate removal - the diversity claim is for naught.

Respondents know this. The whole record shows their removal into the federal system was based solely on their sworn to papers claiming jurisdiction via the removal statute (R. 6,9, 22, 24-26).

Thus, again, respondents wish this court to believe petitioner hallucinates factually. Invoking rule 16.1, commanding the record, will put this scurrilousness to rest forever; allowing federalism to rise again.

Returning again to their paranoia over the record, respondents assert that this Court will not take fact based inquiry as reason to grant

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sharply to defeat certiorari.

a writ of certiorari, (Resp Br 2-3). Such, of course, is the general rule; petitioner knew it full well in its petition.

However:

> "The Supreme Court will usually deny certiorari when review is sought of a lower court decision which turns solely upon an analysis of the particular facts involved....Only when the case acquires importance for some other reason will the Court accept review of such a case and reexamine the facts." Stern, Gressman & Shapiro, Supreme Court Practice, § 4.14 (1986; emphasis supplied).

Clearly, this matter involves, as our petition establishes, more than just the facts. Thus, as they do with the record, respondents screech in panic over the "other reason". There is no **FEDERALISM** issue here! (Resp Br 7-8).

No federalism? Incredible! On the contrary, if petitioner is correct, then there was no jurisdiction in any federal court to decide anything other than that! This does not properly invoke notions of federalism?[5]

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[5] If this Court summons the record, most notably the tape of the oral argument on petitioner's motion for a stay that proceeded

Respondents a/k/a Hauptman oppose certiorari claiming petitioner a/k/a Lindberg wants its baby back! How dare it raise this fact issue!

Upon further reflection, rule 16.1 would allow this Court to award sanctions. Let the petitioner and respondents - one or the other - put their money where their jurisprudential mouths are.

CONCLUSION

For the reasons expressed here and in the petition, it should be granted; or, alternatively, summary disposition be done on the merits.

Respectfully submitted,

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the full appeal, it will hear petitioner's voice firm and clear articulating exactly this, followed by the circuit panel abruptly cutting him off.